SUPREME COURT OF THE UNITED STATES.

No. ~~222~~ 143.

JAMES T. PENDERGAST AND CHARLES H. PENDERGAST, OWNERS AND CLAIMANTS OF THE SCHOONER "SEEING," AND CARGO, APPELLANTS,

vs.

THE UNITED STATES.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF MARYLAND.

GOVERNMENT PRINTING OFFICE.

SUPREME COURT OF THE UNITED STATES.

No. 228.

JAMES T. PENDERGAST AND CHARLES H. PENDERGAST, OWNERS AND CLAIMANTS OF THE SCHOONER "SEEING," AND CARGO, APPELLANTS,

vs.

THE UNITED STATES.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF MARYLAND.

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1 THE UNITED STATES OF AMERICA,
District of Maryland, to wit:

At a circuit court of the United States for the fourth circuit, in and for the Maryland district, begun and held at the city of Baltimore, on the first Monday in April, in the year of our Lord one thousand eight hundred and sixty-three.

Present: The Hon'ble R. B. Taney, chief justice of the Supreme Court of the United States, William F. Giles, judge of Md. district, William Price, esq., attorney, Washington Bonifant, esq., marshal, Thomas Spicer, clerk.

Among other were the following proceedings, to wit:

THE UNITED STATES, appellants,
vs.
SCHOONER SEEING AND CARGO, &c., claimants, appellees.

Be it remembered, that heretofore, to wit, on the 24th day of March, in the year of our Lord one thousand eight hundred and sixty-two, the United States of America, by their att'y, filed in the circuit court here the transcript of a record from the district court of the United States, in and for the Maryland district, in the words and of the terms following, to wit:

THE UNITED STATES OF AMERICA,
District of Maryland, to wit:

At a circuit court of the United States in and for the Maryland district, begun and held at the city of Baltimore on the first Tuesday of December, in the year of our Lord one thousand eight hundred and sixty-one.

2 Present: The Honorable William F. Giles, judge of Maryland district, Wm. Meade Addison, esquire, attorney, Washington Bonifant, esquire, marshal, Thomas Spicer, clerk.

Among other were the following proceedings, to wit:

THE UNITED STATES
vs.
THE SCHOONER SEEING AND CARGO. } Libel filed 27th September, 1861.

Warrant of arrest.

THE UNITED STATES OF AMERICA,
District of Maryland to wit:

To the marshal for the district of Maryland, greeting:

We command you that you attach, seize, take, and safely keep the schooner Seeing and cargo to answer unto the libel of the United States of America, and how you shall execute this precept you make known to us in our district court for the district aforesaid, at the United States court-room, in the city of Baltimore, on the seventh day of October next, and have you then and there this writ.

Witness the Honorable William F. Giles, judge of our said district court, the first Tuesday in September, in the year of our Lord one thousand eight hundred and sixty-one

W. of a. issued 27th September, 1861.

THO. SPICER, *Clk. Dis. Ct.*

3 *Marshal's return.*

Atta'd 27th September, 1861; released on stipulation, 28th Sept., 1861.
W. BONIFANT, *U. S. Marshal.*

THE UNITED STATES
vs.
SCHOONER SEEING AND CARGO.

To the Honorable William F. Giles, judge, &c. :

Pendergast & Brother respectfully petitions the court to order an appraisement that the schooner and cargo may be taken out on stipulation.
PENDERGAST & BROS.

Ordered, this 28th September, 1861, that David Vance and Nathaniel Applegarth be, and they are hereby, appointed appraisers to appraise and value the schooner Seeing and cargo; and that they return their valuation to the court here immediately.
WILLIAM F. GILES.

In pursuance of the foregoing order to us directed, we have appraised the schooner Seeing and her cargo, and appraise and value the same as follows, to wit:

The schooner Seeing to the sum of..... $1, 900
The cargo of the said schooner Seeing..... 1, 789
DAVID VANCE.

James J. Pendergast and William Applegarth entered into stipulation for the sum of $7,000, to pay the sum of $3,689, being the appraised value of the schooner Seeing and cargo. Taken and acknowledged in open court.
THO. SPICER, *Clk.*

28th September, 1861.

4 *Stipulation.*

THE UNITED STATES OF AMERICA,
District of Maryland, to wit:

Be it remembered. that on this twenty-eighth day of September, in the year of our Lord one thousand eight hundred and sixty-one, appeared in the district court of the United States in and for the Maryland district, James J. Pendergast and William Applegarth of the said district, in their proper persons, and submit themselves to the jurisdiction of the district court of the United States in and for the Maryland district, and consent to bind themselves, and do acknowledge themselves, their heirs, executors, and administrators, to be bound, in the sum of seven thousand dollars for the claimants of the schooner Seeing and cargo, unto the United States of America, to perform and fulfil the final order and decree of the said district court, and in case of an appeal from such final order and decree of the said district court, then the final order and decree of the circuit court of the United States for the fourth circuit, in and for the Maryland district, and in case an appeal from such final order and decree of the said circuit, then the final order and decree of the Supreme Court of the United States, in a certain cause, now depending in the said district court, wherein the said United States of America are libellants, and the claimants of the schooner Seeing and cargo

are respondents; and unless they do so, they severally consent that execution shall issue against them, their heirs, executors, and administrators, their goods and chattels, lands, and tenements, wheresoever found
5 or to be found. Taken and acknowledged in open court.

THOMAS SPICER, *Clk Dist. Ct.*

In admiralty.

Libel.

UNITED STATES OF AMERICA, *District of Maryland:*

To the Honorable William F. Giles, judge of the district court of the United States for the Maryland district:

William Meade Addison, esquire, attorney of the United States for the district aforesaid, in the name and in the behalf of the United States, propounds and gives the said judge to be informed and understand that on the 27th day of September, in the Patapsco River, Washington Bonifant, United States marshal for the district aforesaid, did seize the schooner Seeing and her cargo, consisting of grain and potatoes, and now hath the same in his custody, as being forfeited, for the causes hereinafter mentioned. And the said attorney informs and articulately propounds—

First. That the President of the United States, in pursuance of the provisions of the second section of the act of Congress entitled an act to provide for calling forth the militia to execute the laws of the Union, suppress insurrections, and repel invasions, and to repeal the act now in force for that purpose, approved February 28th, 1795, had, prior to the 26th August, 1861, called forth the militia to suppress combinations against the laws of the United States, and to cause the laws to be duly executed, and the insurgents did fail to disperse, by the time directed by the President.

Second. That the said insurgents did claim to act under the author-
6 ity of divers States of the said United States, and their claim is not and hath not been disclaimed or repudiated by the persons exercising the functions of government in such States, or in the part or parts of such State or States which, in the said combinations, exist, nor hath such insurrection been suppressed by the States wherein the same existed.

Third. That the President of the United States, by proclamations, declared that the inhabitants of certain States were in a state of insurrection against the United States.

Fourth. That the States so declared to be in insurrection were Georgia, South Carolina, Tennessee, Virginia, North Carolina, Texas, Arkansas, Mississippi, and Florida, except the inhabitants of that part of Virginia lying west of the Allegany Mountains.

Fifth. That by reason of the premises all commercial intercourse between the aforesaid region of country so in insurrection and the rest of the United States, and the respective inhabitants thereof, ceased and became unlawful.

Sixth. That the said condition of hostility hath ever since continued and still continues.

Seventh. That the said schooner and cargo were proceeding from the said section of the United States so in insurrection as aforesaid, to wit, from a port of the State of Virginia lying east of the Allegany Mountains to the city of Baltimore, in the district aforesaid. Whereby and by force of the statute in such case made and provided, the said schooner Seeing and cargo hath become and is forfeited to the United States of America for the uses in the said statute prescribed.

7 And the said attorney of the United States in behalf of the said United States, saith that all and singular the premises are true, of which due proof being made he prays the usual process and monition of this court in this behalf, and that all persons interested in the said schooner and cargo may, for the cause aforesaid and others appearing, be condemned by the definitive sentence and decree of the court, as forfeited to the use of the United States, according to the form of the statute in such case made and provided.

WM. MEADE ADDISON, *U. S. Attorney.*

Answer.

District court of the United States, Maryland district.

The answer of James J. Pendergast and Charles H. Pendergast, trading under the firm of Pendergast & Brother, owners and claimants of the schooner Seeing and cargo, to the libel of information of Mr. Meade Addison in behalf of the United States against the said schooner and cargo.

And now come the said James A. Pendergast and Charles H. Pendergast, of Baltimore City, and State of Maryland, owners of the said schooner Seeing and cargo, and for answer to the said information do allege and propound as follows, to wit:

First. That the said Pendergasts, under the firm of Pendergast & Brother, are the owners of the said schooner "Seeing and cargo," and that no other person is the owner thereof.

Second. That it is true, as these respondents have been given to understand, that on or about the 27th September, 1861, on the Patapsco River, Washington Bonifant, U. S. marshal for the Maryland district, did seize the said schooner and cargo, and now holds the same, or the proceeds
8 thereof, under the pretence that they are forfeited to the United States, as in said libel is alleged and pretended.

Third. That these respondents admit the matters stated in the 1st, 2nd, and 3d articles of the libel as therein alleged and pleaded, but deny that by reason of the premises all commercial intercourse between the aforesaid region of country in said libel stated to be in insurrection and the rest of the United States, and the respective inhabitants thereof, ceased and became unlawful, as is alleged in the 5th article of said libel.

Fourth. That these respondents admit that at the time of filing the said libel the hostility mentioned in the 6th article thereof continued as therein alleged, but they deny that it still continues; and these respondents allege and propound that so far as that portion of the State of Virginia which lies east of the Chesapeake Bay is concerned, that the said insurrection and hostility have altogether ceased, and commercial intercourse between the said portion of Virginia and the rest of the United States not in insurrection, or declared so to be, and between the respective inhabitants thereof, is re-established and is no longer unlawful.

Fifth. That these respondents altogether deny the matters and things stated in the 7th article of the libel, and do hereby maintain and declare that the same are therein falsely alleged and pleaded.

Sixth. That the respondents believe and do hereby allege and propound that the said seizure of the said schooner and cargo was unlawful and illegal, and that the said schooner and cargo, or the proceeds thereof, as the case may be, are so held and declared by the said marshal without
9 force or color or law.

Seventh. That all and singular the premises are true.

Wherefore these respondents pray that the said schooner and cargo, her

boats, tackle, apparel, and furniture, or the proceeds thereof, as the case may be, may be restored to them, and that your honorable court may pronounce against the said libel and costs.

PENDERGAST & BROS.

ANDREW STERRETT RIDGELY,
Proctor for Respondents.

On this 30th day of November, 1861, appears personally Charles H. Pendergast, of the firm of Pendergast & Bros., respondents, and was sworn to the truth of the aforegoing answer before me.

THOMAS SPICER,
Cl'k Dist. Ct., U. S. Com. ex officio.

Amended answer.

District court of the United States, Maryland district.

The amended answer of James J. Pendergast and Charles H. Pendergast, trading under the firm of Pendergast & Bros., owners and claimants of the schooner Seeing and cargo, to the libel of information of Wm. Meade Addison, in behalf of the United States against the said schooner and cargo.

And now comes the said James J. Pendergast and Charles H. Pendergast, of Baltimore City, and State of Maryland, owners and claimants of the said schooner Seeing and cargo, and for answer to the said information do allege and propound—

First. That the said respondents, under the firm of Pendergast & Bros., are the owners of the said schooner Seeing and cargo, and that no
10 other person is the owner thereof.

Second. That it is true, as these respondents have been given to understand, that on or about the 27th day of September, 1861, in the Patapsco River, Washington Bonifant, United States marshal for the Maryland district, did seize the said schooner and cargo, and now holds the same under the pretence that they are forfeited to the United States, as in said libel is alleged and pleaded.

Third. That the matters and things contained in the 1st, 2d, and 3d articles of said libel are, to the best of the knowledge and belief of these respondents, true, as therein alleged and propounded.

Fourth. That as to the matters and things contained in the 4th article of said libel, the same are therein, in great part, falsely alleged and pleaded, for the truth and fact was and is that the States, or the inhabitants thereof, by the proclamation of the President of the United States so declared to be in insurrection were Georgia, North Carolina, Tennessee, Virginia, South Carolina, Texas, Arkansas, Mississippi, Alabama, Louisiana, and Florida, "except the inhabitants of that part of the State of Virginia lying west of the Allegany Mountains, and of such other parts of that State and the other States hereinbefore named as maintain a loyal adhesion to the Union and constitution, or may be from time to time occupied and controlled by the forces of the United States engaged in the dispersion of said insurgents."

Fifth. That the county of Accomac, of the State of Virginia, and the inhabitants thereof, or that portion of the same bounding on Pocomoke Bay and Sound, have, to the best of the knowledge and belief of those respondents, always maintained a loyal adhesion to the Union and the con-
11 stitution of the United States, or have been from time to time occupied and controlled by forces of the United States engaged in the dispersion of said insurgents.

Sixth. That the respondents deny the matters and things contained in the 5th article of said libel, as also the matters and things contained in the 6th and 7th articles thereof, and do hereby avow and propound that the same are therein falsely alleged and pleaded.

Seventh. That on or about the 10th of September last the said schooner Seeing cleared from the port of Baltimore for Pocomoke River, Maryland, under special instructions from these respondents to the captain of said schooner there to proceed and take in a cargo of wood, suitable for the New York market; and in case the wood could not be had, the said captain was by said instructions required to procure a cargo of sweet potatoes and proceed with the same to New York; that not being able to procure a cargo of suitable wood the said captain loaded the said schooner with grain and sweet potatoes, and proceeded on said voyage; but the said schooner, encountering head winds and being delayed, in order to prevent the decay and destruction of said potatoes consequent thereon, the said captain changed the course of said schooner and returned with her to Baltimore, Maryland, where he arrived about the said 27 day of September.

Eighth. That these respondents do believe and do hereby allege and propound that the aforementioned seizure of the said schooner and cargo was wrongful and illegal, and that the said schooner and cargo were so seized, and are now held and detained without force or color of law.

Ninth. That all and singular the premises are true.

Wherefore these respondents pray that the said schooner and cargo, her boats, tackle, apparel, and furniture, or the proceeds thereof, as the
12 case may be, may be restored to them, and that your honorable court may pronounce against the said libel and costs.

PENDERGAST & BROS.

ANDW. STERRETT RIDGELY,
Proctor for Respondents.

Sworn before me this 17 day of December, 1861, in open court.

THOS. SPICER, *Clk.*

Deposition of John Sparrow, witness for the libellants, taken before John Hanan, esq., U. S. comm'r, at the city of Baltimore, on the 30 September, 1861.

I was born in Somerset County, in the State of Maryland, and am now a resident of Accomac County, in the State of Virginia. I am acquainted with the schooner Seeing, having shipped on board of her on last Friday week in Pocomoke Sound. Pocomoke Sound is bounded partially by Accomac County on one side and by Somerset County, Maryland, on the other. The vessel was on her voyage outward bound when I boarded her.

On being asked what he meant, in his deposition taken before me on the 27th of September, 1861, that he joined the vessel at Accomac, in the State of Virginia, he answered:

The mouth of Pocomoke Sound is in Virginia, in Accomac County. I boarded her about the mouth of the sound on her outward voyage. I was told she was bound to New York. We sailed on Tuesday night about 30 or 40 miles out of Cape Henry, and came back into Cape Henry again
13 on Sunday afternoon, and beat up the bay all night till we reached Baltimore. They told me she had on board about 1,300 barrels of sweet potatoes, 100 bushels of wheat, and 100 bushels of corn. I boarded her in Virginia waters, near the mouth of Pocomoke Sound, Accomac County. Accomac County is on both sides of the mouth of Pocomoke Bay. When I boarded her the vessel was not more than a quarter of a mile from the shore: All the cargo was on board before I went on board. I saw none

of the cargo put on board of her. I did not see any of the cargo carried to her from the shore.

Cross-examined.

The channel entering into Pocomoke Bay lies between Virginia shores. The upper part of the bay turns off to the eastward, and one side is in Maryland and the other in Virginia.

his
JOHN ⋈ R. SPARROW.
mark.

The witness being recalled, the proctor for the libellant asked the following question:

Question. In your examination you stated that you joined this vessel on her outward voyage. Do you mean she was sailing at the time, or was she at anchor?

Answer. She was at anchor, with part of her sails set. I don't know how long she had been at anchorage. She was not there over a couple of hours before I joined her, as far as I know. I acted as mate on her. I don't know how long she had been in Virginia waters, nor how long she was at anchor. When I first saw her she was coming down the Pocomoke Sound. I don't know where she got the potatoes from.

14 *Cross-examined.*

When I first saw the schooner Seeing she was coming down the sound. The captain had heard of me, and being short of hands had anchored there to enable me to get on board, but took in no freight of any sort at that time. I knew nothing of her before that time. My object in going on board of her was to act as mate.

his
JOHN ⋈ B. SPARROW.
mark.

Custom-house certificate.

CUSTOM-HOUSE, *Balt'o., Dec.* 21*st*, 1861.

I certify that it appears from a manifest filed in this department that the schooner Seeing, whereof Safford is master, cleared light from the port of Baltimore, in Pocomoke River, on the 9th of September, 1861.

C. M. JAMESON, *D'y Collect'r.*

Affidavits.

In U. States district court for the Maryland district.

THE UNITED STATES
vs.
THE SCHOONER SEEING AND CARGO.

On this 23d December, 1861, in open court, appeared John R. Young, a deputy marshal of the United States, for the district of Maryland, and made oath, in due form of law, that he served a summons on John W. Pitts, on Friday morning, the 20th December, 1861. That the summons was for William Pitts. That affiant asked the said Pitts if he were Wm. Pitts, and he answered in the affirmative. That he said he was William Pitts
15 after this affiant had summoned him.

JOHN R. YOUNG.

Sworn to in open court this 23d December, 1861.

THOS. SPICER, *Clk*

And at the same time appeared in open court James H. Downs, and having been sworn in due form of law, he deposes that he was in court on Saturday, 21st December, 1861, when the summons and attachment on that day issued for Wm. Pitts. That at the time one of the claimants in this cause, —— Pendergast, was in court when the attachment and summons were ordered. That the affiant is a deputy marshal of the United States for the district of Maryland, and was charged with the service of said summons and writ of attachment. That shortly after their being issued he went as rapidly as he could to the store of the said John W. Pitts, on Howard street, between Lombard and Pratt streets, for the purpose of summoning and attaching the said John W. Pitts. That on his arrival there he found there *he found there* the aforesaid Pendergast, but he could not find the same Thomas W. Pitts. That he has diligently, since then, sought the said John W. Pitts, but has been unable to find him, either at his business, his residence, or elsewhere. And the affiant verily believes that he is keeping himself out of the reach of the officers of this court to avoid giving evidence in this cause. That the place of business of the said —— Pendergast is on Gay street, below Pratt street, a distance of nearly one mile from the store of said Pitts.

JAMES H. DOWNS.

Sworn to in open court 23d December, 1861.

THOMAS SPICER, *Clk.*

16 And at the same time, in open court, appeared A. C. Williams, one of the United States deputy marshals for this district, and having been first duly sworn according to law, deposes that he has good reason to believe, and does believe, that the aforesaid John W. Pitts came upon the Seeing, on the voyage in question, from Accomac County, Virginia; and that he knows, and if examined in court would prove, where said vessel was loaded, which the said Williams verily believes was in Accomac County, Virginia.

A. C. WILLIAMS.

Sworn to in open court 23d December, 1861.

THOS. SPICER, *Clk.*

Decree.

In the district court of the United States, Maryland district.

UNITED STATES
vs.
SCHOONER SEEING AND CARGO, JAMES J. PENDERGAST and Charles H. Pendergast, claimants.

This cause having been heard and considered, it is on this 31st day of December, 1861, adjudged, ordered, and decreed that the libel in this cause be, and the same is hereby, dismissed, and that each party pay his own costs.

WILLIAM F. GILES.

From which said decree so as aforesaid passed the said United States of America, by their attorney aforesaid, prayed an appeal to the circuit
17 court of the United States, for the fourth circuit, in and for the Maryland district, to be held at the city of Baltimore on the first Monday in April next, and to them it is granted.

Thereupon it is ordered by the court here that the record and proceedings aforesaid, with all things relating to the same, be transmitted to the said circuit court, and the same are hereby transmitted accordingly.

In testimony that the aforegoing is a true copy taken from the record and proceedings of the district court aforesaid, I hereunto subscribe my name and affix the seal of the said district court this twenty-fourth day of March, in the year of our Lord one thousand eight hundred and sixty-two.

THOMAS SPICER, *Clk Dist. Ct.*

Afterwards, to wit, on the 23d day of May, 1862, the appellants, by their attorney aforesaid, in the circuit court here, the deposition of N. P. Sofford, a witness for the appellants, in the words and of the tenor following, to wit:

THE UNITED STATES OF AMERICA,
District of Maryland, to wit:

I, John Hanan, a commissioner appointed by the circuit court of the United States for the fourth circuit, in and for the Maryland district, pursuant to the act of Congress entitled "An act for the more convenient taking of affidavits and bail in civil causes depending in the courts of the United States," do hereby certify that on the 23d day of May, in the year of our Lord one thousand eight hundred and sixty-two, at my office, in the city of Baltimore, within the district of Maryland, personally appeared before me Niles
18 P. Sofford, a witness for the appellant in a certain civil cause depending in the circuit court of the United States for the district aforesaid, on an appeal from the United States district court of Maryland, wherein the United States of America is appellant and the claimants of the schooner Seeing and cargo are appellees. And the said witness being by me first carefully examined and cautioned, and duly sworn according to law, to testify the whole truth, and being examined on behalf of the appellants, makes oath, deposeth, and saith as follows, to wit:

I have been following the sea all my life. I had command of the schooner Seeing for three voyages. The last voyage was from Baltimore to Pongoteague. Can't recollect the day or month of that voyage, but it was some time in the fall, when sweet potatoes were getting ripe. We took in sweet potatoes at Pongoteague. I don't know how many; it might have been a 1,000 barrels, or it might have been more or less. I sailed for New York with them. Wrung my centreboard off outside the capes, and then returned to Baltimore. The vessel was seized by Mr. Williams, a deputy marshal of the United States, the day after we arrived in Baltimore. When we sailed from Baltimore, went straight to Pongoteague. I did not know anything about the place, but was carried in by a pilot. (Deponent points out a spot on this chart of the Chesapeake Bay into which he knows, of his own knowledge, the vessel went.) I loaded at an old steamboat wharf, as they called it. It was in Pongoteague Creek, but I don't know if it is in Maryland or Virginia. There was a rebel fort there, and the secession officers
19 took my papers and detained me a day. The name of the man who owned the wharf where I loaded I would know if I heard it mentioned. I don't now recollect it. I can now recollect; his name was Capt. Hutchison. We laid there three or four days. I think even more than that. I cleared for Pocomoke Bay, to get either potatoes or wood, under the instructions of Messrs. Pendergast & Bros., the owners. Mr. Pitts went down from here with me, and while we were anchored in the mouth of Pocomoke Mr. Pitts went off in a boat at night and got a white pilot, who carried the vessel in and brought her out of Pongoteague Creek. I don't know what relation Mr. Pitts bore to the vessel, but he was the man who had her carried into Pogoteague and bought the potatoes. I don't recollect if he was ever aboard with Mr. Pendergast. I never saw Mr. Pitts before he went down

with me. Yes, I have seen Mr. Pitts before; I saw him down at Great Choptank, when I was getting a load of wood there. He came down there with Mr. Pendergast, and came up in the schooner Seeing with him.

In reply to the question of the U. S. dist. attorney, why he allowed the vessel to be controlled by Mr. Pitts he answers:

I got into shoal water; did not know where I was, and Mr. Pitts went after a pilot without any order from me, and brought him down. I don't know how Mr. Pitts came to be on board said vessel, except as an agent. I had orders from Mr. Pendergast to carry Mr. Pitts down to Pongoteague.

A. P. SOFFORD.

Cross-examined.

I was summoned last Monday by Mr. Williams, U. S. deputy marshal. He told me he wanted me to go to Mr. Hanan's, the commissioner's office. Then I smelt a rat, and knew it was about the schooner Seeing. Mr. Williams hinted to me it was about the schooner Seeing that he wanted me, and
20 that was why I smelt a rat. I have been afraid ever since I run the blockade that I would be brought up for so doing. I was ordered to do it by Mr. Pendergast. In stating that I was ordered to run the blockade by Mr. Pendergast, I mean that I was ordered by him to carry Mr. Pitts to Pongoteague, as stated in my examination in chief. I left Newbern, N. C., on the 8th of May, and arrived here about the 11th. I was summoned before the commissioner last Tuesday, the 20th inst.

N. P. SOFFORD.

In the circuit court of the United States for the district of Maryland, on an appeal from the United States district court.

THE UNITED STATES
vs.
SCHOONER SEEING AND CARGO.

To Messrs. Ridgley & Steele, proctors for the appellees:

You are hereby notified that the undersigned, a commissioner appointed by the circuit court of the United States for the fourth circuit, in and for the district of Maryland, pursuant to the act of Congress entitled "An act for the more convenient taking of affidavits and bail in civil cases depending in the courts of the United States," will proceed, at his office, No. 11 Courtland street, in the city of Baltimore, within the district of Maryland, on Friday, the 23d day of May, in the year eighteen hundred and sixty-two, at 10 o'clock a. m., and from day to day thereafter until completed, to take the deposition of witnesses on behalf of the appellant in the above-entitled cause.

And you are hereby notified to attend at the taking of the same, to
21 put interrogatories to the witnesses examined, if you shall think fit.

Given under my hand this 20th day of May, in the year eighteen hundred and sixty-two.

JOHN HANAN, *U. S. Commissioner.*

Served between 4 and 5 o'clock p. m., on Wednesday last, on the counsel for appellees.

A. C. WILLIAMS.

And I, John Hanan, a commissioner as aforesaid, do also certify that the reason for taking the foregoing deposition of N. P. Sofford was that it might be read on the trial of the aforesaid cause depending in the circuit court of the United States for the district of Maryland, on an appeal from the United States district court of Maryland.

And I further certify that notice of the time and place of the taking of the aforegoing deposition was served on the proctors for appellees, and that they were present at the taking of the same.

And I also certify that the deponent was by me first carefully examined, and cautioned, and duly sworn according to law, to testify the whole truth, and that the foregoing deposition was then reduced to writing by me, and thereafter subscribed by the said deponent in my presence.

And I do further certify that I am not of counsel or attorney for either of the parties to the said cause; and that I am not interested in the event of the said cause.

Given under my hand and seal, in the city of Baltimore, within the
22 district of Maryland, this 23d day of May, in the year of our Lord one thousand eight hundred and sixty-two.

JOHN HANAN, [SEAL.]
U. S. Commissioner for Maryland.

And the said United States of America, by their attorney aforesaid, filed in the circuit court here the deposition of St. George W. Teackle, a witness for the appellants, in the words following, to wit:

UNITED STATES OF AMERICA, *District of Maryland, to wit:*

I, John Hanan, a commissioner appointed by the circuit court of the United States for the fourth circuit, in and for the Maryland district, pursuant to an act of Congress entitled "An act for the more convenient taking of affidavits and bail in civil causes depending in the courts of the United States," do hereby certify that on the ninth day of May, in the year of our Lord one thousand eight hundred and sixty-three, at my office, in the city of Baltimore, within the district of Maryland, personally appeared before me St. George W. Teackle, witness for the appellants in a certain civil cause depending in the circuit court of the United States for the district of Maryland, on an appeal from the United States district court of Maryland, wherein the United States of America is appellant, and the claimants of the schooner Sering and cargo are appellees.

And the said witness being by me first carefully examined, and cautioned, and duly sworn according to law, to testify the whole truth, and being examined on behalf of the appellants, makes oath, deposeth, and saith
23 as follows, to wit:

I am a native of Accomac County, State of Virginia. I am acquainted with Pongoteague Creek; have been on it many times; and sailed on it very often; and was a student at Mayant Academy, within less than a mile and half of it. The creek is in Accomac County, Virginia. I am acquainted with the wharf in Pongoteague Creek called Hutchinson's wharf, and have stopped there several times. This wharf, I suppose, is not more than three or four miles from the mouth of Pongoteague Creek, if that much. I have never known a steamer go higher up than that wharf, but think ordinary steamboats might go higher up. I have seen sailboats drawing five or six feet of water going higher up. I don't believe the whole creek is ten miles long. A vessel drawing eight feet of water could go up to Hutchinson's wharf.

ST. G. W. TEACKLE.

And I, John Hanan, a commissioner as aforesaid, do also certify that the reason for taking the foregoing deposition of St. G. W. Teackle is that it may be read in evidence on the trial of the aforesaid, now depending in the circuit court of the United States for the district aforesaid, on an appeal from the United States district court of Maryland.

And I do further certify that due notice of the time and place of the taking of the aforegoing deposition was first made out and served on the proctors for the appellees, and that they were present at the taking of the same.

24 And I do also certify that the deponent was by me first carefully examined, and cautioned, and duly sworn according to law, to testify the whole truth, and that the foregoing deposition was then reduced to writing by me, and thereafter subscribed by the said deponent in my presence. And I do further certify that I am not of counsel or attorney for either of the parties to the said cause, and that I am not interested in the event of the said cause.

Given under my hand and seal, at the city of Baltimore, within the district of Maryland, this ninth day of May, in the year of our Lord one thousand eight hundred and sixty-three.

JOHN HANAN, [SEAL.]
U. S. Commissioner for Maryland.

Afterwards, to wit, on the nineteenth day of May, in the year of our Lord 1863, the circuit court here made and passed the following decree, to wit:

Circuit court of the United States in and for the fourth circuit, Maryland district.

THE UNITED STATES
vs.
THE SCHOONER SEEING AND HER CARGO.

This cause having been heard and considered, it is thereupon, this 19th May, 1863, adjudged, ordered, and decreed that the decree of the district court of the United States for the Maryland district rendered in this cause be, and the same is hereby, reversed, and that the schooner Seeing and her cargo be adjudged to have been forfeited to the United States for the causes set forth in the libel.

R. B. TANEY.

25 And it appearing to the court that the said schooner and her cargo were delivered to the claimants upon stipulation at a valuation of three thousand six hundred and eighty-nine dollars, it is thereupon further ordered, adjudged, and decreed that the said claimants and stipulations do pay unto the United States the said sum of three thousand six hundred and eighty-nine dollars.

R. B. TANEY.

From which said decree, so as aforesaid, passed the said claimants of the said Schooner and cargo, prayed an appeal to the Supreme Court of the United States, to be held at the city of Washington on the first Monday in April next, and to them it is granted.

Appeal bond.

Know all men by these presents that we, C. H. Pendergast and Andrew Flannigan, are held and firmly bound unto the United States of America in the just and full sum of five hundred dollars *dollars*, lawful money of the United States, to be paid to the said United States, their certain attorney or assigns, to which payment, well and truly to be made and done, we hereby bind ourselves, or heirs, executors, and administrators, jointly and severally, firmly by these presents. Sealed with our seals and dated this 23rd day of May, in the year of our Lord one thousand eight hundred and sixty-three.

Whereas at a circuit court of the United States for the fourth circuit, in

and for the Maryland district, begun and held at the city of Baltimore, on the first Monday in April, in the year of our Lord one thousand eight
26 hundred and sixty-three, the said United States of America obtained a decree of the said circuit court in form following, to wit:

"This cause having been heard and considered, it is thereupon, this 19th day of May, 1863, adjudged, ordered, and decreed that the decree of the district court of the United States for the Maryland district rendered in this cause be, and the same is hereby, reversed, and that the schooner Seeing and her cargo be adjudged to have been forfeited to the United States for the causes set forth in the libel. And it appearing to the court that the said schooner and her cargo were delivered to the claimants upon stipulation and at a valuation of three thousand six hundred and eighty-nine dollars, it is thereupon further ordered, and adjudged, and decreed that the said claimants and stipulators do pay unto the United States the said sum of three thousand six hundred and eighty-nine dollars."

From which said decree so as aforesaid passed the said claimants have prayed an appeal to the Supreme Court of the United States, to be held at the city of Washington on the first Monday in December next:

Now the condition of the above obligation is such that if the said claimants of the said schooner Seeing and her cargo shall well and truly prosecute with effect their said appeal, and pay unto the said United States, their certain attorney or assigns, the amount of said decree, and also all such damages as may be awarded unto them by the said Supreme Court, in case the said claimants should fail to make good their said appeal, then the above
27 obligation to be void and of none effect; otherwise, to be and remain in full force and virtue in law.

C. H. PENDERGAST. [SEAL.]
A. FLANNIGAN. [SEAL.]

Signed, sealed, and delivered in presence of—
THOS. SPICER.

Approved.

R. B. TANEY.

May 30th, 1863.

Thereupon it is ordered by the court here that the record and proceedings aforesaid, with all things concerning the same, be transmitted to the said Supreme Court. And the same are transmitted accordingly.

In testimony that the aforegoing is a true copy taken from the record and proceedings of the circuit court aforesaid, I hereunto subscribe
[SEAL.] my name and affix the seal of the said circuit court this fourth day of December, in the year of our Lord one thousand eight hundred and sixty-three.

THOS. SPICER, *Clk Circuit Court.*

Filed March 17, 1864.

REC. 228—3

1 UNITED STATES OF AMERICA,
District of Maryland, to wit:

At a circuit court of the United States for the fourth circuit, in and for the Maryland district, begun and held at the city of Baltimore, on the first Monday in April, in the year of our Lord one thousand eight hundred and sixty-three.

Present: The Hon'ble Roger B. Taney, chief justice of the Supreme Court of the United States; William F. Giles, judge Maryland district; William Price, esq., att'y; Washington Bonifant, esq., marshal; Thomas Spicer, clerk.

Among others were the following proceedings, to wit:

THE CLAIMANTS OF THE SCHOONER MONTEREY AND CARGO
vs.
THE UNITED STATES.

Be it remembered, that on the 17th day of July, in the year of our Lord 1862, the said claimants of the said schooner, by A. S. Ridgely, their proctor, filed in the circuit court here the manuscript of a record from the district court of the United States in and for the Maryland district, in the words and of the tenor following, to wit:

THE UNITED STATES OF AMERICA,
District of Maryland, to wit:

At a district court of the United States in and for the Maryland district, begun and held at the city of Baltimore, on the first Tuesday in June, in the year of our Lord one thousand eight hundred and sixty-two.

William F. Giles, judge Maryland district; William Price, esq'r, attorney; Washington Bonifant, esq., marshal; Thomas Spicer, clerk.

2 Among others were the following proceedings, to wit:

Attachment.

THE UNITED STATES
vs.
THE SCHOONER MONTEREY AND CARGO.

THE UNITED STATES OF AMERICA,
District of Maryland, to wit:

To the marshal for the Maryland district, greeting:

We command you that you attach, seize, take, and safely keep schooner Monterey, her tackle, apparel, and furniture, and cargo, to answer the libel of the United States of America, and how you shall execute this precept you make known to us in our district court for the district aforesaid, at the United States court-room, in the city of Baltimore, on the 27 day of June inst., and have you then and there this writ.

Witness the Honorable William F. Giles, judge of our said district court, this first Tuesday of June, in the year of our Lord one thousand eight hundred and sixty-two.

THOS. SPICER, *Clerk Dist. C'rt.*

Wm. P., issued 17 day of June, 1862.

Return.

Atta'd June 17, '62. Released by stip'n, July 7th, 1862.

THE UNITED STATES OF AMERICA,
District of Maryland, to wit:

Whereas on the 17th day of June, 1862, Wm. Price, United States district attorney, filed a libel in the district court of the United States for the Maryland district against the schooner "Monterey" and cargo, in a cause of forfeiture; and whereas, by virtue of a process in due form of law, to me
3 directed, returnable on the 27th June instant, I have seized and taken the said schooner and cargo and have the same in my custody:
Notice is hereby given that a district court of the United States will be held at the United States court-room, in the city of Baltimore, on the 27th instant, for the trial of the said premises, and the owner or owners and all persons who may have or claim any interest are hereby cited to be and appear at the time and place aforesaid to show cause, if any they have, why a final decree should not pass as prayed.

WASHINGTON BONIFANT,
United States Marshal.

Agreement.

In the U. S. district court of the Maryland district.

THE UNITED STATES
vs.
SCHOONER MONTEREY AND CARGO.

It is agreed on the part of the plaintiff and defendant in this case that John L. Thomas, jr., and William H. Crawford, shall act as appraisers.

WM. PRICE, *U. S. Dist. Att'y.*

Ordered, this 18th day of June, 1862, that a warrant to appraise the vessel and cargo in the above cause be issued to John L. Thomas, jr., and William H. Crawford.

WILLIAM F. GILES.

MY DEAR JUDGE: Mr. Thomas has been selected by W. Price, the dist. att'y, in the above case. I had named McCaron, but the claimants had spoken to Mr. Crawford, so I have agreed to the substitution.

Respect'ly, A. S. RIDGELY, *for Claimants.*

4 *Appraisers' return.*

We, the undersigned, John L. Thomas and William H. Crawford, the appraisers appointed by the U. S. district court for the Maryland district to appraise the schooner Monterey and cargo in the case of the United States *vs.* said schooner and cargo, after a due examination and valuation of the same, do find and value the said schooner at the sum of six hundred and fifty dollars..... $650 00
And the said cargo at the sum of sixteen hundred and twenty-three dollars and eighty-six cents..... 1,623 86

Total..... 2,273 86

And do hereby, together with the annexed inventory, return and certify that our appraisement to said court, as witness our hands and seals.

JNO. L. THOMAS. [SEAL.]
WM. H. CRAWFORD. [SEAL.]

Sworn to before me, in open court, this 19 June, 1862.

THOS. SPICER, *Clk Dist. Court.*

5 *Appraisement of sch'r Monterey and cargo, made June* 18, 1864, *by Jno. L. Thomas and Wm. H. Crawford.*

Schooner Monterey		$650 00
60 bbls. gingercakes, at $3 per bbl		180 00
10 bbls. soda biscuit, 668 lbs., at 5c. p'r lb		33 40
3 bbls. pilot bread, 236 lbs., at 3½c. p'r lb		8 26
25 boxes oranges, at $1 50 p'r box		37 50
5 boxes lemons, at $2 00 p'r box		10 00
3 boxes hoarhound candy, 225 lbs, at 10c		22 50
9 boxes brandy peaches, $1 p'r box		9 00
180 lbs. maple sugar, at 10c		18 00
1 case brandy peaches, $4		4 00
9 cases matches, 108, at 15c. p'r gross		16 20
7 bbls. dried apples, 1,050 lbs., at 4c		42 00
19 tubs butter, 1,550 lbs., at 6c		93 00
10 ba'ls butter crackers, 823 lbs., at 4c		32 92
20 bbls. whiskey, 45 bottles, at $9 16		144 00
20 cigars, at $9		180 00
74 boxes cheese, 3,250 lbs., 5c		162 50
61 boxes cheese, 3,009 lbs., 6½c		180 54
87½ gross chewing tobacco, at $1 75		153 12
32½ gross smoking tobacco, at $1 12		36 56
30 boxes candles, 206, 600 lbs., at 11c		66 00
2 doz., 2 lbs. beef in cans, $3 p'r doz		6 00
8 doz., 2 lbs. mutton in cans, $3 p'r doz		24 00
6 doz., 2 lbs. veal in cans, $3 per doz		18 00
10 doz., 2 lbs. chicken in cans, $4 p'r doz		40 00
6 doz., 2 lbs. apple pulp in cans, $1 50 p'r doz		9 00
12 doz. 1 lb. lobsters in cans, $1 25 p'r doz		15 00
4 doz. milk drinks, $1 50 p'r doz		6 00
3 doz. Tom and Jerry, $1 50 p'r doz		6 00
4 doz. ½ p't jelly, $1 75 p'r doz		7 00
4 doz. custard, $1 75 p'r doz		7 00
5 doz. ½ gal. pickels, $2 00 p'r doz		10 00
	4 doz. ph. cherries, $1 25 p'r doz	5 00
6	4 doz. 1 lb. oysters, $1 75 per doz	7 00
	5 boxes 1c. pepper, 60c	3 00
2 brls. Bologna sausage, 328 lbs., 7c		22 96
24 beef tongues, 35c		8 40
		2,273 86

Stipulation.

THE UNITED STATES OF AMERICA,
District of Maryland, to wit:

Be it remembered, that on this seventh day of July, in the year of our

Lord one thousand eight hundred and sixty-two, before me, John Hanaan, a commissioner appointed by the circuit court of the United States for the fourth circuit, in and for the Maryland district, pursuant to the act of Congress entitled "An act for the more convenient taking of affidavits and bail in civil causes depending in the courts of the United States," appears William Danter, Cornelius W. Campbell, and Edwin C. Serviss and submit themselves to the jurisdiction of the district court of the United States for the district of Maryland, and consent to bind themselves, their heirs, creditors, and administrators, to be bound in the sum of twelve hundred dollars, for the claimants of the schooner Monterey, her boats, tackle, apparel, and furniture, unto the United States of America, to perform and fulfil the final order and decree of the said district court, and, in case of an appeal from such final order and decree of the said district court, there the final order and decree of the circuit court of the United
7 States for the fourth circuit, in and for the Maryland district, and in case of an appeal from such final order and decree of the said circuit court, then the final order and decree of the Supreme Court of the United States, in a certain cause now depending in the said district court, wherein the said United States of America is libellant and the claimant of the said schooner Monterey is respondent, and unless they so do they severally consent that execution shall issue against them, their heirs, executors, and administrators, their goods, chattels, lands, and tenements, wheresoever found or to be found.

Acknowledged before—

JNO. HANAN, *U. S. Commissioner.*

Libel.

In admiralty.

UNITED STATES OF AMERICA,
District of Maryland, to wit:

To the Honorable Wm. F. Giles, judge of the district court of the United States for the district of Maryland:

William Price, attorney of the United States for the district aforesaid, in the name and on behalf of the said United States propound and gives the said judge to understand and be informed that on the fourteenth day of June, in the year of our Lord one thousand eight hundred and sixty-two, John F. McGilton, surveyor of the port of Baltimore, in said district, did seize a certain schooner called the Monterey, her tackle, apparel, and furniture, and cargo, and now hath the same in his custody as being for-
8 feited to the said United States for the causes hereafter stated, and thereupon the said attorney informs, alleges, and articulately propounds as follows, to wit:

First. The President of the United States, in pursuance of the provisions of the second section of the act of Congress entitled "An act to provide for calling forth the militia to execute the laws of the Union, suppress insurrections and repel invasions, and to repeal the act now in force for that purpose," approved February 28, 1795, had, prior to the 11th day of April, 1862, called forth the militia to suppress combinations against the laws of the said United States, and to cause the laws to be duly executed, and the insurgents did fail to disperse by the time directed by the President.

Second. That the said insurgents did claim to act under the authority of divers States of the said United States, and their is not and hath not been disclaimed or repudiated by the persons exercising the functions of government in such State or States, or in the part or parts of such State or States

wherein the said combinations exist, nor hath such insurrections been suppressed by the States wherein the same exists.

Third. That the President of the United States, by proclamation, declared that the inhabitants of certain States were in a state of insurrection against the United States.

Fourth. That the States so declared to be insurrection were Georgia, South Carolina, Tennessee, Virginia, North Carolina, Texas, Arkan-
9 sas, Mississippi, and Florida, except the inhabitants of that part of Virginia lying west of the Alleghany Mountains.

Fifth. That by reason of the premises all commercial intercourse between the sections so declared to be in insurrection and the rest of the United States became and was unlawful; and all goods, wares, and merchandize, proceeding to such section of any State, or part thereof, together with the vessel conveying the same, became forfeited to the United States, except such intercourse or trade in such articles as the President might in his discretion, under rules and regulations to be prescribed by the Secretary of the Treasury, authorize and license.

Sixth. That by reason and virtue of the premises, the Secretary of the Treasury did, by his communication of May 7, 1862, addressed to Henry W. Hoffman, collector of the port of Baltimore, authorize the said collector to grant a clearance to a certain William Dayton, sutler of the 32 regiment of the New York Volunteers, 3 brigade, for a vessel to Fort Monroe and Yorktown, with a cargo of certain enumerated articles of suttlers' supplies, needed for the army near that place, with a condition distinctly inserted in the said clearance that the said vessel and all her cargo were to be forfeited to the United States if any other goods should be found on board of such vessel than those so specified, on examination by the custom-house officers, or by the military and naval authorities, after clearing for Fort Monroe and Yorktown.

Seventh. That by virtue of the authority thus given to the said col-
10 lector, he did, on the 14 day of June, 1862, upon the request of the said collector, he did, upon the request of the said William Dayton, grant a clearance for a schooner called the Monterey, whereof G. Ellington was master, to Fort Monroe and Yorktown, with a schedule or manifest of the articles composing the cargo, upon the face of which manifest it was declared that the said vessel and all her cargo were to be forfeited to the United States if any other goods were found on board of her than those specified in examination by the custom-house officers, which said schedule or manifest was signed by the said G. Ellington, the master aforesaid.

Eighth. That the schooner Monterey was, on the said 14 day of June, 1862, proceeding on her voyage from the city of Baltimore to Fort Monroe and Yorktown with her said cargo on board, her clearance granted and signed as aforesaid; and that after the said clearance, and on examination by the custom-house officers at the city of Baltimore aforesaid, other goods were found on board of the said schooner than those specified, that is to say, three (3) hundred bottles of whiskey, which was packed away in barrels or boxes represented or labeled as containing goods within the said clearance. That by reason of the premises and by force of the statutes of the said United States in such cases made and provided, and the President's proclamation, in pursuance thereof the said schooner called the Monterey, together
11 with her tackle, apparel, sails, furniture, and cargo, or goods and effects found on board thereof, have become forfeited to the United States. That all and singular the premises are true and within the admiralty and maritime jurisdiction of the United States and of this court.

Wherefore the said attorney of the United States on behalf of the said United States prays the usual process and monition of this court in this behalf to be

made, and that all persons interested in said schooner called the Monterey and her cargo, tackle, furniture, sails, &c., may be warned thereof, and that, for the causes aforesaid and others appearing, the said vessel, cargo, tackle, furniture, sails, &c., may be condemned by the definitive sentence of this court as forfeited to the said United States.

WM. PRICE, *District Att'y U. S.*

Bond.

Know all men by these presents that we, W. Dayton, E. C. Seriss, G. Ellington, and Henry Kelsey, of Baltimore, are held and firmly bound unto the United States of America in the sum of six thousand dollars, for which payment, well and truly to be made, we bind ourselves, our heirs, executors, and administrators, jointly and severally, firmly by these presents.

Now the condition of the above obligation is such that whereas a clearance from the port of Baltimore, in the State of Maryland, has this day been granted to the schooner Monterey, whereof G. Ellington is master,
12 to proceed to Fort Monroe and Yorktown, in the State of Virginia, with a cargo as per manifest filed in the office of the collector of the port of Baltimore, in compliance with a letter from the Secretary of the Treasury to said collector, dated the 7 day of May, in the year 1862:

Now, therefore, the conditions of the above obligation are such that if said cargo, as per manifest, shall be truly landed at Fort Monroe and Yorktown, as aforesaid, and none of the articles so conveyed shall be used to give aid or comfort to the insurgents, then this obligation shall be null and void; otherwise, to remain in full force and effect.

W. DAYTON. [SEAL.]
E. C. SERISS. [SEAL.]
G. ELLINGTON. [SEAL.]
H. KELSEY. [SEAL.]

Signed, sealed, and delivered, the 14 day of June in the year 1862, in presence of—

C. M. JAMESON, J.

Claim.

In the district court of the United States for Maryland district.

UNITED STATES
vs.
SCHOONER MONTEREY AND CARGO.

To the Honorable William F. Giles, judge of the district court of the United States for the district of Maryland:

William Dayton, of Washington City, D. C., and Q'd Service, of New York City, State of New York, owners of the schooner Monterey and
13 cargo, and the tackle, apparel, and furniture of said schooner, intervening for their interest in said schooner, her tackle, apparel, and furniture, and cargo, appear before this honorable court and claim said schooner, her tackle, apparel, furniture, and cargo, and state that they are the true and bona fide owners thereof, and that neither person is the owner thereof.

And thereupon the said claimants pray that this honorable court will be

pleased to decree a restoration of the same to them, and otherwise right and justice to administer in the premises.

WILLIAM DAYTON.
E. SEVISS,
Per W. DAYTON.

Sworn June 19, 1862, before me. Sworn to in open court, this 19 June, 1862.

THOS. SPICER, *Clk.*

ROB'T BARRY, JR.
AND'W STERETT RIDGELY,
Proctor for Claimant.

Affidavit of John W. Perego.

This 20 day of June, 1862, in open court, personally appeared Jno. W. Perego and made oath that the two guns and a pair of blankets now on board schooner Monterey are private property of said Perego, and do not belong to claimants or owners of said vessel and cargo.

JOHN W. PEREGO.

Affirmed to in open court this 20 day of June, 1862.

THOS. SPICER, *Clk.*

14 *Order of court.*

Ordered by the court, this 20 day of June, 1862, that the above articles of private property belonging to a passenger on board the schooner Monterey be delivered to the claimant, Jno. W. Perego.

WILLIAM F. GILES.

Answer.

To the Hon. Wm. F. Giles, judge of the district court of the United States for the Maryland district:

The answer and claim of William Dayton, of Washington City, and of Ed. C. Seviss, of the city of New York, intervening for their interest in the schooner Monterey, her tackle, apparel, furniture, and cargo, to the libel of information of Wm. Price, attorney for the United States for the district of Maryland, filed in behalf of the United States against the said schooner and cargo.

And now comes the said William Dayton and Edward C. Serviss, owners of the said schooner and cargo, and for answer to said libel allege and propound as follows:

1st. That on or about the 14 June, 1862, the said schooner and cargo were seized and are now held in custody, as in said libel is alleged and pleaded.

2d. That the matters and things contained in the 1st, 2d, and third articles of said libel are true, as the same are therein alleged and pleaded.

3d. That the matters and things contained in the fourth article of said libel are falsely alleged and pleaded; for the truth and fact are that
15 the States so to by the President declared this proclamation in said libel referred to, to be in insurrection, were the States of Georgia, South Carolina, Virginia, North Carolina, Tennessee, Alabama, Louisiana, Texas, Arkansas, Mississippi, and Florida, except the inhabitants of that part of the State of Virginia lying west of the Alleghany Mountains, and of such other parts of that State, and the other States hereinafter named, as

may maintain a loyal adhesion to the Union and constitution, or may be from time to time occupied and controlled by forces of the United States engaged in the dispersion of the insurgents in said proclamation alluded to.

4th. The matters and things contained in the 5th ar., of the said libel are therein falsely alleged and pleaded; for the truth and fact was and is that while all commercial intercourse between the sections by the President in this said proclamation so declared to be in insurrection and the rest of the United States became and was unlawful, and all the goods, wares, and merchandize proceeding to such section of any State or part thereof, together with the vessel conveying the same, became forfeited to the United States; yet such is not the case in regard to goods, wares, and merchandize proceeding to that part of the State of Virginia lying west of the Alleghany Mountains, nor to such parts of the other States as may maintain a loyal adhesion to the Union and constitution, nor to any such State, section
16 nor part of a State, as may be from time to time occupied and controlled by the forces of the United States engaged in the dispersion of said insurgents, the inhabitants of such western portion of Virginia and such parts and sections of other States being especially excepted by the President in his said proclamation and not declared to be in a state of insurrection, and all goods and chattels, wares and merchandize proceeding thereto, together with the vehicle conveying the same, being in and by said proclamation specially excepted and reserved from such forfeiture, and the proviso contained in the 5 sec. of the act of Congress of July 13, 1862, entitled "An act further to provide for the collection of duties on imports, and for other purposes," authorizing the President to license and permit commercial intercourse in his discretion, under rules and regulations to be prescribed by the Secretary of the Treasury, does not apply to commercial intercourse with any such State, section, or any part of a State specially excepted as aforesaid, but only to such intercourse or trade with such State, section, or part of a State whose inhabitants the President has declared or may lawfully declare to be in a state of insurrection against the United States.

5th. That the matters and things contained in the sixth, seventh, and eighth articles of said libel are true, as therein stated; nevertheless,
17 these *these* respondents alleged and propounded the that the condition referred to in the 6th of said articles, as contained in the communication from the Secretary of the Treasury, and the clearance in said article alluded to, together with the declaration referred to in the 7 of said articles as contained in the manifest of cargo therein alluded to, were and are void and of no legal force or effect, because Fortress Monroe and Yorktown, to which parts or places the said schooner and cargo were proceeding or bound, were, at and before the clearance and seizure of said schooner and cargo, and still are, occupied and controlled by the forces of the United States engaged in the disunion of said insurgents; and there exists no law or authority for limiting or controlling commercial intercourse therewith in any such manner or way.

6th. That the said William Dayton is the true and bona fide owner of said schooner, and no other person is the owner thereof, and that the said cargo is the property of the said Dayton and Ed. C. Servis as copartners therein, and that no other person is the owner of said cargo.

7th. That all and singular the premises are true.

Wherefore the said Dayton claims restitution of the said schooner, her tackle, apparel, and furniture, and the said Dayton and Servis claim restitution of the said cargo, and both pray that such restitution may be ordered and decreed, and that your honor may pronounce against the libel aforesaid, and to condemn the said John F. McJilton, the party making said seizure, in

damages and costs, and otherwise law and justice to administer in the
18 premises.

W. DAYTON.
E. C. SERVISS.

ROBERT BARRY, Jr.,
ANDREW STERETT RIDGELY,
Proctors for Respondents.

Sworn to before me this 24 day of June, 1862, by Wm. Dayton, Ed. C. Serviss, respectively.

JOHN HANAN, *U. S. Commissioner.*

Admission of facts.

In the United States district court, Maryland district.

THE UNITED STATES
vs.
SCHOONER MONTEREY AND CARGO.

It is admitted in this case that the schooner Monterey is an American vessel, and the property of the claimant, William Dayton; that at and before the time of her clearance and seizure she was regularly enrolled and licensed for the coasting trade, and that Fort Monroe and Yorktown was at that time, and still is, occupied and controlled by the forces of the United States engaged in putting down the insurrection against the United States, and in the dispersion of the insurgents engaged in the same.

BARRY & RIDGELY *for Respondents.*
WM. PRICE, *Dist. Att'y, U. S.*

It is further admitted that the schooner Monterey is, as regards the present case, *is* under the charter to the then claimants of cargo, who were to receive for her expenses twelve dollars per day.

Petition of claimant for appraisement.

In the United States district court, M'd district.

THE UNITED STATES
vs.
SCHOONER MONTEREY AND CARGO.

19 To the Honorable Judge Giles:

The petition of William Dayton and Edwin C. Lewis respectfully states that heretofore, to wit, on or about the day of June, these petitioners depicted in the registory of your honorable court the sum of sixteen hundred and twenty-three dollars and eighty-six cents, ($1,623 86-100,) being the amount of the appraised value of the cargo in the above-entitled case, and received thereupon an order of court directing the marshal to deliver into the hands of said petitioners the said cargo, they being the claimants of the same, which was accordingly done; that on opening the hatches of the schooner and examining the said cargo your petitioners found that in consequence of the confined state of the same that it had become greatly damaged and deteriorated in value since the appraisement thereof. To the end, therefore, that the said cargo may be examined by the said appraisers with a view of ascertaining the real value thereof, and that your petitioners may

be allowed a deduction from the same so by them deponded as aforesaid equal to the amount of such deterioration to be ascertained by the said appraisers on further examination of the same, your petitioners pray your honor to pass an order directing the said John L. Thomas, jr., and Wm. H. Crawford, the appraisers of said cargo, to examine into the condition of said cargo, and to report to this honorable court whether or not the same had become damaged and deteriorated at the time it was given up to these petitioners so as to make it less valuable than where the appraisers
20 as aforesaid, and to state in dollars and cents the extent of said damage and deterioration to the best of their judgment and ability, and report the same immediately to this hon. court, and your petitioners will pray.

E. C. SERVISS.

Sworn to in open court this 1 day of July, 1862.

THOS. SPICER, *Cl'k.*

AND'W STERETT RIDGELY, *for Petitioners.*

Ordered this 1st July, 1861, that the appraisers heretofore appointed in the above cause re-examine the cargo of the schooner Monterey, and ascertain whether the same on coming into the hands of the claimants was damaged and deteriorated, and to report to this court whether the said damage and deterioration have taken place in said cargo since their 1st appraisement thereof, and to state in dollars and cents the amount of said damage or deterioration, and immediately thereupon to report the same to this court.

Agreement.

In the U. S. district court, M'd dist.

UNITED STATES
vs.
SCHOONER MONTEREY AND CARGO.

In the matter of the petition of the claimants of the cargo, filed this date in the above case, it is agreed that the same may be set down for a hearing at 12 o'clock noon of this 3d day of July, 1862.

AND'W STERETT RIDGELY,
Proctor for Petitioner.
WM. PRICE, *Dist. Att'y, U. S.*

21 *Order of court.*

In the United States district court for Maryl'd district.

In the matter of the petition of the claimants to correct the appraisement.

UNITED STATES
vs.
MONTEREY AND CARGO.

Ordered this July 3, 1862, in the matter of the petition of Wm. Dayton and Ed. C. Serviss that there be an abatement made in the appraised value of her cargo in this case to the amount of four hundred and seventy-nine dollars, and that the clerk pay to the said claimants out of the amount of the appraisement by them heretofore deposited in court the said sum of four hundred and seventy-nine dollars, on account of the deterioration in said

cargo between the date of the appraisement of the same and the time when the said cargo was delivered to the said claimants, the said sum of $479 having been on a hearing of the said petition proved to the court to be the amount of said deterioration.

WILLIAM F. GILES.

Receipt.

THE UNITED STATES
vs.
SCHOONER MONTEREY.

Appraised value of the cargo	$1, 623 86
Deduct from the above by order of the court	479 00
	1, 144 86

BALTIMORE, *July* 5, 1862.

Rec'd from the clerk of the district court of the United States for Maryland district four hundred and seventy-nine dollars, the above amount, ordered by the court to be paid to the claimant out of the funds in
22 court, $479, less $4 79 clerk's commissioners.

AND'W STERETT RIDGELY.

Petition.

In the U. S. district court for the Maryland district.

UNITED STATES
vs.
SCHOONER MONTEREY AND CARGO.

To the Hon. Wm. F. Giles, judge of the U. S. district court for the Maryland district:

The petition of William Dayton and Ed. C. Serviss, owners and claimants of the cargo in the above-entitled cause, respectfully states that the said cargo, as appears by the appraisers' report, filed in said cause was on the 19 day of June by them appraised and valued at the sum of $1,623 86; that some time after said appraisement was made, to wit, on or about the 24 day of June said claimants deposited in this court, in money, the amount of said appraisement, whereupon by order of this court the cargo was released to them; that immediately thereupon they took possession of the same and found the said cargo had, since the appraisement made and returned as aforesaid and before the said taking possession of the same by the claimants under said order, *had* become seriously damaged and impaired in value by reason of the hatches of said schooner not having after the seizure and custody of the said schooner and cargo by the officers in charge been daily opened and said cargo daily aired, and by reason of the close and confined state of the vessel consequent therefrom.

They therefore pray your honor that inquiry may be had in regard
23 to the said injury, and that these petitioners may be allowed to withdraw from the funds so by them deposited in lieu of said cargo an amount sufficient to cover said loss and damage, and that such order or decree be passed by this honorable court in the premises as justice and equity may require, and the petitioner will ever pray.

AND'W S. RIDGELY,
Proctor for Petitioners.

Order.

Ordered in the matter of the above petition that the same be set down for hearing at 12 o'c'k m. on this Thursday, the 3 day of July, 1862, the proctor for the claimants and the attorney for the United States having by their agreement filed in the cause aforesaid thereto.

WILLIAM F. GILES.

Decree.

In the district court of the United States for the district of Maryland.

UNITED STATES
vs.
THE SCHOONER MONTEREY.

This cause standing ready for hearing, the counsel for the United States and for the claimants appearing, and the evidence and pleadings having been duly considered, it is thereupon, this second day of July, 1862, adjudged, ordered, and decreed that the said schooner called the Monterey be forfeited to the United States by virtue of the act of the 13 July, 1861, it appearing to the court that the said vessel had violated the condition of her clearance papers or permit, having on board on her cargo certain articles not specified in said papers or thereby licensed or permitted by the
24 president of the United States, and had cleared for Fort Monroe and Yorktown, Virginia. And it is further ordered that the marshal do sell the same at public auction for cash, after giving two days' notice thereof in two newspapers published in the city of Baltimore. And it is further ordered that the marshal do pay the proceeds of said sale into the registry of this court to await further order of the court in the premises.

WILLIAM F. GILES.

From which said decree, so as aforesaid passed, the said claimants by their proctor have prayed an appeal to the circuit court of the United States for the fourth circuit, in and for the Maryland district, to be held at the city of Baltimore on the first Monday in November next, and to them it is granted. Thereupon it is ordered by the court here that the record and proceedings aforesaid, with all things convening the same, be transmitted to the said circuit court, and the same are hereby transmitted accordingly.

Appeal bond.

Know all men by these presents that we, W. Dayton, E. C. Serviss, and C. W. Campbell, are held and firmly bound unto the United States of America in the just and full sum of three hundred dollars lawful money, to be paid to the said United States of America, their certain attorney, successors, or assigns, to which payment, well and truly to be made and done, we hereby bind ourselves, our heirs, executors, administrators,
25 and assigns, jointly and severally, firmly by these presents. Sealed with our seals, and dated this seventeenth day of July, in the year of our Lord one thousand eight hundred and sixty-two.

Whereas at a district court of the United States in and for the Maryland district, begun and held at the city of Baltimore, in the first Tuesday in June, in the year of our Lord one thousand eight hundred and sixty-two, the said United States of America by the decree of the same court recovered their decree of condemnation and forfeiture against the schooner Monterey and cargo; from which said decree so as aforesaid passed the claimants

of the said vessel and cargo have prayed an appeal to the circuit court of the United States for the fourth circuit, in and for Maryland dist., to be held at the city of Baltimore, on the first Monday in November next:

Now the condition of the above obligation is such that if the said claimants of the said schooner and cargo shall well and truly prosecute their said appeal, and pay unto the said United States their cost and charges decreed unto them by the said district court, and also all such costs and charges as shall be awarded unto them by the said circuit court in case they shall fail to make good their said appeal, then the above obligations to be void if none effect; otherwise, to be and remain in full force and virtue in law.

W. DAYTON. [SEAL.]
E. C. SERVISS. [SEAL.]
C. W. CAMPBELL. [SEAL.]

26 In testimony that the aforegoing is a true copy of the original on file among the record and proceedings of the district court aforesaid, I hereunto subscribe my name and affix the seal of the said district court this 2nd day of July, in the year of our Lord one thousand eight hundred and sixty-two.

THOS. SPICER, *Cl'k Dist. C'rt.*

Afterwards, to wit, on the 19th day of May, 1863, the court here made and papers the following decree, to wit:

Appeal from the district court.

Circuit court, U. S., for Maryland district, April term, 1863.

THE CLAIMANTS OF THE SCHOONER MONTEREY AND CARGO
vs.
THE UNITED STATES.

This cause standing ready for hearing, the transcript of the record being seen, read, and considered, and the argument of the proctors for the respective parties heard, it is thereupon this 19th day of May, 1863, by the authority of this court, adjudged, ordered, and decreed that the decree of the said district court from which the present appeal is taken be, and the same hereby is, affirmed.

R. B. TANEY.

From which said decree so as aforesaid passed, the said claimants of the schooner Monterey and cargo, by their attorneys aforesaid, prayed an appeal to the Supreme Court of the United States, to be held at the city of Washington on the first Monday in November next, and to them it is granted.

27 Thereupon it is ordered by the court here that the record and proceedings of the decree aforesaid, so passed as aforesaid, be transmitted to the said Supreme Court, and the same are hereby transmitted accordingly.

28 Know all men by these presents that we, W. Dayton, E. C. Serviss, G. Ellington, and Henry Kelsey, of Baltimore, are held and firmly bound unto the United States of America in the sum of six thousand dollars, for which payment, well and truly to be made, we bind ourselves, our heirs, and administrators, jointly and severally, firmly by these presents.

Now the condition of the above obligation is such that whereas a clearance from the port of Baltimore, in the State of Maryland, has this day been

granted to the schooner Monterey, whereof G. Ellington is master, to proceed to Fort Monroe and Yorktown, in the State of Virginia, with a cargo as per manifest filed in the office of the collector of the port of Baltimore, in compliance with a letter from the Secretary of the Treasury to said collector, dated the 7th day of May, in the year 1862:

Now, therefore, the conditions of the above obligation are such that if said cargo as per manifest shall be truly landed at Ft. Monroe and Yorktown as aforesaid, and none of the articles so conveyed shall be used to give aid or comfort to the insurgents, then this obligation shall be null and void; otherwise, to remain in full force and effect.

W. DAYTON. [SEAL.]
E. C. SERVISS. [SEAL.]
G. ELLINGTON. [SEAL.]
H'Y KELSEY. [SEAL.]

Signed, sealed, and delivered this 14 day of June, in the year 1862, in presence of—

M. JAMESON.

29 In testimony that the aforegoing is a true copy taken from the record and proceedings of the circuit court aforesaid I hereunto [SEAL.] subscribe my name and affix the seal of the said circuit court this fourth day of December, in the year of our Lord one thousand eight hundred and sixty-three.

THOS. SPICER, *Clk Cir'c't Ct.*

Filed 26th March, 1864.